

1 MICHAEL S. DICKE (admitted *pro hac vice*)
mdicke@fenwick.com
 2 JENNIFER C. BRETAN (admitted *pro hac vice*)
jbretan@fenwick.com
 3 KATHERINE A. MARSHALL (admitted *pro hac vice*)
kmarshall@fenwick.com
 4 ALISON C. JORDAN (admitted *pro hac vice*)
ajordan@fenwick.com
 5 SAMUEL SAHAGIAN (admitted *pro hac vice*)
ssahagian@fenwick.com
 6

FENWICK & WEST LLP
 555 California Street, 12th Floor
 San Francisco, CA 94104
 Tel: 415.875.2300

7 JOHN D. TENNERT III (Nevada Bar No. 11728)
jtennert@fennemorelaw.com
 10 FENNEMORE CRAIG, P.C.
 7800 Rancharrah Parkway
 11 Reno, NV 89511
 Tel: 775.788.2212

12 *Attorneys for Defendant Yuga Labs, Inc.*

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 ROBERT ARMIJO,

17 Plaintiff,

18 v.

19 OZONE NETWORKS, INC. d/b/a OPENSEA,
 a New York Corporation, YUGA LABS LLC
 20 d/b/a BORED APE YACHT CLUB, a Delaware
 limited liability company; LOOKSRARE; and
 21 DOES 1 to 50,

22 Defendants.

Case No.: 3:22-cv-00112-MMD-CLB

**DECLARATION OF NICOLE MUNIZ
 IN SUPPORT OF DEFENDANT
 YUGA LABS' MOTION TO DISMISS
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT**

1 I, Nicole Muniz, hereby declare as follows:

2 1. I am the Chief Executive Officer of Yuga Labs, Inc., a Delaware corporation (the
3 successor entity to Yuga Labs, LLC) (together, “Yuga Labs”). I base this declaration on
4 personal knowledge or on business records which I have reviewed. If called to testify as a
5 witness in this matter, I could and would testify competently to the facts set forth herein.

6 2. At the time of the events described in the First Amended Complaint, Yuga Labs
7 was a Delaware limited liability company with its principal place of business in Alexandria,
8 Virginia. On February 22, 2022, Yuga Labs converted to a Delaware corporation.

9 3. Yuga Labs does not have and has never had offices in Nevada and none of Yuga
10 Labs’ employees or contractors reside in Nevada. Yuga Labs also has never purchased or used
11 any physical advertising space in the state of Nevada and has never held a sales or marketing
12 event – or an event of any kind – within the state of Nevada.

13 4. Yuga Labs is the developer of smart contracts (programmed lines of code) that,
14 when executed on the Ethereum blockchain, allow individuals a license to mint pieces of digital
15 art (each a “non-fungible token” or “NFT”).

16 5. In early 2021, Yuga Labs created a smart contract for a series of “Bored Ape”
17 NFTs as part of a large-scale, community-driven art project. After Yuga Labs launched the
18 smart contract in April 2021, collectors used the smart contract to mint a digital Bored Ape NFT
19 (from a collection 10,000 Bored Apes that were made available to be minted) by paying 0.08
20 Ethereum to Yuga Labs as the developer. The complete collection sold out by May 1, 2021.
21 Based on the price of Ethereum in the period the Bored Ape NFTs were available to be minted,
22 the approximate cost of 0.08 Ethereum ranged from \$169 to \$236.

23 6. Later in 2021, Yuga Labs created another smart contract (a “serum”) that, when
24 executed, would allow individual owners of Bored Ape NFTs to receive a “mutant” version of
25 their Bored Ape NFT, resulting in another series of digital art collectibles, each called a “Mutant
26 Ape.” An additional 10,000 Mutant Ape NFTs were made available to mint, whether or not an
27 individual already held a Bored Ape NFT.
28

1 7. Once minted, a Bored Ape or Mutant Ape NFT confers on its holder certain
2 commercial rights with respect to content featured on the NFT, which rights are tied to and
3 transfer with the NFT itself. Yuga Labs does not control secondary purchases, sales, or trading
4 of Bored Ape or Mutant Ape NFTs. Yuga Labs does not have any ability to assess competing
5 claims to ownership of any individual NFT. It only knows who the current holder of the NFT is
6 according to the blockchain.

7 8. Along with certain commercial rights in the NFTs, holders of Bored Ape and
8 Mutant Ape NFTs may be eligible for certain exclusive benefits and opportunities, the vast
9 majority of which are offered by third parties with no connection to Yuga Labs. Yuga Labs does
10 maintain a publicly available website, called the “Bored Ape Yacht Club” or “BAYC” (available
11 at boredapeyachtclub.com), which is the virtual clubhouse home of the Bored Apes and Mutant
12 Apes. Other than an ongoing token-gated feature on the site, where NFT holders can choose to
13 make time-limited pixel-by-pixel contributions to a communal artwork, the site is largely passive
14 and informational and does not provide specific benefits to holders of Bored Ape and Mutant
15 Ape NFTs. The terms and conditions applicable to the website, and by extension, to holders of
16 the Bored Ape and Mutant Ape NFTs, expressly disclaim responsibility for the safety and
17 management of Bored Ape and Mutant Ape NFTs and note that users are responsible for the
18 safety of their private Ethereum wallets and all transactions involving digital collectibles.
19 Indeed, as the terms advise, because the Bored Ape and Mutant Ape NFT smart contracts run on
20 the Ethereum network, Yuga Labs has no ability to undo, reverse, or restore any transactions.

21 9. The Bored Ape and Mutant Ape project took hold in the collective imagination and
22 spawned countless third-party websites, business and commercial opportunities, online and
23 offline events, and other community-driven initiatives which Yuga Labs does not control.

24 10. In addition to the BAYC website, Yuga Labs also has a BAYC Twitter account
25 and a BAYC Discord server. The BAYC Discord is a social and informational space where
26 enthusiasts can read announcements, review frequently asked questions, discuss Yuga Labs’ (or
27 their own) various projects and interests with other NFT holders and enthusiasts, or visit Yuga
28

1 Labs' official channels across the web through verified links. Yuga Labs does not sell anything
2 to anyone through the BAYC Twitter account or BAYC Discord.

3 11. The BAYC Discord server is accessible worldwide and has both public facing and
4 token-gated sub-channels. None of the Yuga Labs employees who provide support on the
5 BAYC Discord are based in Nevada.

6 12. While Yuga Labs is present on the internet generally, through the BAYC Discord
7 and Twitter, and thus accessible to Nevada residents, the BAYC Discord and BAYC Twitter
8 account do not target Nevada or its residents.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct.

11 Executed on 7/28/2022, in Brooklyn, New York.

12 Nicole Muniz

13 Nicole Muniz
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on July 29, 2022, a true and correct copy of the **DECLARATION OF NICOLE MUNIZ IN SUPPORT OF DEFENDANT YUGA LABS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT** was transmitted electronically through the Court's CM/ECF e-filing electronic notice system to all attorneys associated with the above-captioned case.

/s/ Jennifer C. Bretan

Jennifer C. Bretan
Fenwick & West LLP

FENWICK & WEST LLP